

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC., a Delaware Corporation; CAROLINE RECORDS, INC., a New York Corporation; VIRGIN RECORDS AMERICA, INC., a California Corporation; EMI BLACKWOOD MUSIC, INC., a Connecticut Corporation; EMI APRIL MUSIC, INC., a Connecticut Corporation; EMI FULL KEEL MUSIC, Inc., a duly organized Corporation; EMI VIRGIN MUSIC, INC., a New York Corporation; EMI ROBBINS CATALOG, INC., a New York Corporation; EMI WATERFORD MUSIC, INC., a California Corporation; EMI GROVE PARK MUSIC, INC., a California Corporation; COLGEMS-EMI MUSIC, INC., a Delaware Corporation; and EMI VIRGIN SONGS, INC., a New York Corporation

Plaintiffs,

v.

VIDEOEGG, INC. d/b/a VIDEOEGG.COM, a Delaware corporation; HI5 NETWORKS, INC. d/b/a HI5.COM; and DOES 1-10, inclusive

Defendants.

CASE NO. 08 CV 5831

DECLARATION OF MARC E. MAYER IN  
OPPOSITION TO MOTION OF  
DEFENDANT HI5 NETWORKS, INC. TO  
DISMISS, OR, ALTERNATIVELY, TO  
TRANSFER VENUE

I, MARC E. MAYER, declare under the penalties of perjury as follows:

1. I am an attorney at law, duly licensed to practice law in the State of California. I have been admitted *pro hac vice* to this Court in connection with this action. I am, through my professional corporation, a partner in the law firm Mitchell Silberberg & Knupp LLP, counsel of record for the plaintiffs in this action. I know all of the following of my own personal knowledge and, if called as a witness, could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of a computer screenshot reflecting an “archived” version of Hi5’s homepage, in which certain cities are listed and a few of those cities (including New York and Brooklyn) are placed in oversized typeface. This screenshot was taken by my office on or about August 13, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of computer screenshots of webpages located at <http://www.hi5.com/friend/New+York--TopCities-html> and <http://www.hi5.com/friend/Brooklyn--TopCities-html>, which were taken by my office on or about August 13, 2008. These screenshots reflect that Hi5 has (or represents that it has) at least 320,000 users in or around New York City, and 290,000 in Brooklyn.

4. Attached hereto as Exhibit 3 is a true and correct copy of computer screenshots reflecting searches conducted on the website Hi5.com for users by zip code, for the zip codes 11378, 12260, 14850, 14601, and 13421. These screenshots were taken by my office on or about August 6, 2008.

5. Attached hereto as Exhibit 4 is a page containing two computer screenshots reflecting a specific infringement at issue in this action and the source of that infringing content. The screenshot at the top of Exhibit 4 was provided to me by representatives of EMI Music North America and reflects the availability on Hi5 of the video “The Kill,” by artist “30 Seconds To Mars.” That screenshot reflects that this video was uploaded on November 30, 2006, by “Kelly.” The screenshot at the bottom of Exhibit 4 was taken by my office on or about August 1,

2008, and reflects the user profile for “Kelly,” including that she is located in Richmond Hill, NY.

6. Attached hereto as Exhibit 5 is a second set of three computer screenshots reflecting additional specific infringements at issue in this action and the source of that infringing content. The two screenshots on the first page of Exhibit 5 were provided to me by representatives of EMI Music Publishing and reflect the availability on Hi5 of the videos “Drive” and “Stellar,” by artist “Incubus.” These screenshots reflect that these videos were uploaded on March 13, 2007, and April 12, 2007, by “Dark Angel.” The screenshot at page 2 of Exhibit 5 was taken by my office on or about August 8, 2008, and reflects the user profile for “Dark Angel,” including that she is located in South Ozone Park, New York.

7. Attached hereto as Exhibit 6 is a true and correct copy of computer screenshots taken by my office on August 14, 2008, reflecting the results of searches for Hi5 “groups” with the term “New York” (or associated geographical terms) in the title or description.

8. Attached hereto as Exhibit 7 is a true and correct copy of Hi5’s “Terms of Service,” as updated July 2008. These “Terms of Service” were taken by my office from Hi5’s website, located at <http://www.hi5.com/friend/displayTOS.do>, on or about August 13, 2008.

9. Attached hereto as Exhibit 8 is a true and correct copy of a computer screenshot of the Hi5 webpage entitled “About Us,” located at <http://www.hi5networks.com/aboutus/html>, which was taken by my office on August 13, 2008.

10. Attached hereto as Exhibit 9 is a true and correct copy of a computer screenshot of the Hi5 webpage entitled "Advertise," located at <http://www.hi5networks.com/advertising.html>, which was taken by my office on August 13, 2008.

11. Attached hereto as Exhibit 10 is a true and correct copy of a "Customer Case Study" of Hi5 from Hyperic, Inc. This document was located by my office on August 13, 2008, at the website <http://download.hyperic.com/pdf/Hyperic-CS-hi5.pdf>.

12. Attached hereto as Exhibit 11 is a true and correct copy of a job listing for a "Director of Advertising Sales at hi5.com," which was posted on "SF Bay Area Craigslist." This document was located by my office on August 13, 2008, at the website [www.craigslist.com](http://www.craigslist.com).

13. Attached hereto as Exhibit 12 is a true and correct copy of computer screenshots reflecting "archived" video search results and individual video pages from the website Hi5.com. The first of these screenshots shows search results for the term "Coldplay" and reflects that the first three videos (of a purported 624 total) are "tagged" with the keyword "Coldplay." The second of these screenshots shows search results for the term "Chingy" and reflects that the first three videos (of a purported 173 total) are "tagged" with the keyword "Chingy." The third of these screenshots shows a page for the video "Lenny Kravitz – Can't Get You Off My Mind," and reflects that the video is "tagged" with the keyword "lenny kravitz." The fourth of these screenshots shows a page for the video "Norah Jones – Don't Know Why," and reflects that the



video is tagged with the keyword “norah jones.” These screenshots were taken by my office on or about August 13, 2008.

14. Attached hereto as Exhibit 13 is a true and correct copy of computer screenshots reflecting searches for Hi5 “groups” whose title or description contains the terms “Beatles,” “Coldplay,” “Radiohead,” “Lenny Kravitz,” and “Beyonce.” These screenshots were taken by my office on or about August 13, 2008.

15. Attached hereto as Exhibit 14 is a true and correct copy of an article posted on “Crain’s New York Business.com,” (located at <http://www.crainsnewyork.com>) entitled “Small West Coast firm sees dollar signs in city.” This article was located by my office on or about August 5, 2008.

16. Attached hereto as Exhibit 15 is a true and correct copy of a screenshot of the “Contact” page on VideoEgg.com, located at <http://www.videoegg.com/contact>, reflecting the phone number for VideoEgg’s New York office. This screenshot was taken by my office on August 13, 2008.

17. Attached hereto as Exhibit 16 is a true and correct copy of entries on the website “Wikipedia” for the terms “Cost per impression” and “Pay per click,” which my office located at the website [www.wikipedia.com](http://www.wikipedia.com).

Executed on August 18, 2008, at Los Angeles, California



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Marc E. Mayer

**EXHIBIT 1**

hi5 - Who's in? - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Go Links

Address http://web.archive.org/web/20070406185113/http://hi5.com/

REPLAY at&t

**SIGN IN**

Email:

Password:

☐ REMEMBER ME

**Login**

Don't have a hi5 account?  
Sign up now

Forgot Your Password?

**MUSIC SPOTLIGHT**

**Joell Ortiz**  
Genre: hip-hop  
Label: KOCH

**POPULAR VIDEOS**

winter sport  
winter sport - funny! :~))  
11952 views

This is XTREME  
This Extreme...  
12010 views

**SEARCH IN YOUR CITY**

City

Country

**Search**

**SPOTLIGHT**

**Find. Watch. Share.**

Upload your videos, add flicks to your profile, or subscribe to your favorite channels.  
[» Check out hi5 Video](#)

**Poo-mail is the new email**  
Send a brown message to a friend.

**hi5 - Who's in? - Micro...**

Document2 - Microsoft ...

Error on page.

Start Internet 8:05 PM

**EXHIBIT 2**

hi5 - Who's in? | New York - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/New+York--TopCities.html

hi5 Home My Profile Friends Messages Groups Search


**Profile Search** Site Search »

We found **320,000** users in your network matching your criteria.  
Email:

**SEARCH RESULTS**


1-20 of 320000 1 2 3 4 5 Next > >|

**Jessie Desir**




Add as Friend  
Send Message

**Eduardo**




Add as Friend  
Send Message

**Fiorela**



Add as Friend  
Send Message

**Robert T**



Add as Friend  
Send Message

**DeVry University**  
We major in careers:  
Learn more about DeVry's Game & Simulation Programming Degree

**GET 3 FREE GAME DEMOS**  
Over 90% of DeVry graduates find careers in their field

Internet 4:42 PM



## **EXHIBIT 3**



hi5 | Your Friends. Your World. - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/processSearch.do?searchNew=1&fromPage=%2Ffriend%2FWEB-INF%2Fsearch%2FsearchTotal.jsp&fromEmail=0&email=&name=&

[ Join | Log in ] Help

Home My Profile Friends Messages Groups Search


**LifeLock**  
#1 In Identity Theft Protection  
Proactive Identity Theft Protection  
Know you are protected  
Enroll Now  
www.lifelock.com


**Profile Search** Site Search »


We found **140,000** users in your network matching your criteria.

Name: Age: - Sex: **Both** Status: **Any** Looking to: **Any** Location: Search within **5 mi of 11378, United States of America**

**SEARCH RESULTS**  
1-20 of 140000  
1 2 3 4 5 Next > > |

**Fiorela**  
  
Add as Friend  
Send Message

**Vanessa Maurice**  
  
Add as Friend  
Send Message

**Maria**  
  
Add as Friend  
Send Message

Start Internet

12:05 PM

hi5 | Your Friends. Your World. - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/processSearch.do?searchNew=1&fromPage=%2Ffriend%2FWEB-INF%2Fsearch%2FsearchTotal.jsp&fromEmail=0&email=&name=&

[ Join Log in ] Help

Home My Profile Friends Messages Groups Search

**Find Your Graduating Class**

I graduated in: 1998 1988 1978 1968 1958

**classmates.com**

**Profile Search** Site Search »

We found **6,900** users in your network matching your criteria.

Name: Age: Sex: **Both** Status: **Any** Looking to: **Any** Location: Search within **5 mi of 12260, United States of America**

**SEARCH RESULTS**

1-20 of 6900 1 2 3 4 5 Next > > |

**Ricardo**

Add as Friend  
Send Message

**AnjoInfernal AnjoInfernal**

Add as Friend  
Send Message

**Denise Dennis**

Add as Friend  
Send Message

Start Microsoft Office Commun... hi5 | Your Friends. Your ... Document2 - Microsoft ... Internet 11:36 AM

hi5 | Your Friends. Your World. - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/processSearch.do?searchNew=1&fromPage=%2Ffriend%2FWEB-INF%2Fsearch%2FsearchTotal.jsp&fromEmail=0&email=&name=&

[ Join | Log in ] Help

Home My Profile Friends Messages Groups Search

**Profile Search** Site Search »

We found **3,700** users in your network matching your criteria.

Name: Age: - Sex: **Both** Status: **Any** Looking to: **Any** Location: Search within **25 mi** of **14850, United States of America**

**SEARCH RESULTS**

1-20 of 3700 1 2 3 4 5 Next > > |

**Mo**

**Mandi**

**Danny**

Add as Friend  
Send Message

Add as Friend  
Send Message

Add as Friend  
Send Message

Lose 15 Pounds Fast  
www.extremecalberry.com

Make \$225 a Day in 60 Mins from Home  
makemyincomeathome.com

Internet

Start Microsoft Office Commun... hi5 | Your Friends. Yo... Document2 - Microsoft ... 11:41 AM

hi5 | Your Friends. Your World. - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/processSearch.do?searchNew=1&fromPage=%2Ffriend%2FWEB-INF%2Fsearch%2FsearchTotal.jsp&fromEmail=0&email=&name=&

[ Join | Log in ] Help

Home My Profile Friends Messages Groups Search

**Profile Search** Site Search »


We found **3,800** users in your network matching your criteria.

Name: Age: Sex: **Both** Status: **Any** Looking to: **Any** Location: Search within **25 mi** of **14601, United States of America**

**SEARCH RESULTS**


1-20 of 3800 1 2 3 4 5 Next > >|

**ruben lopez**




Add as Friend  
Send Message

**Ed**



Add as Friend  
Send Message

**Heather**



Add as Friend  
Send Message

"Teeth Whiteners Exposed"

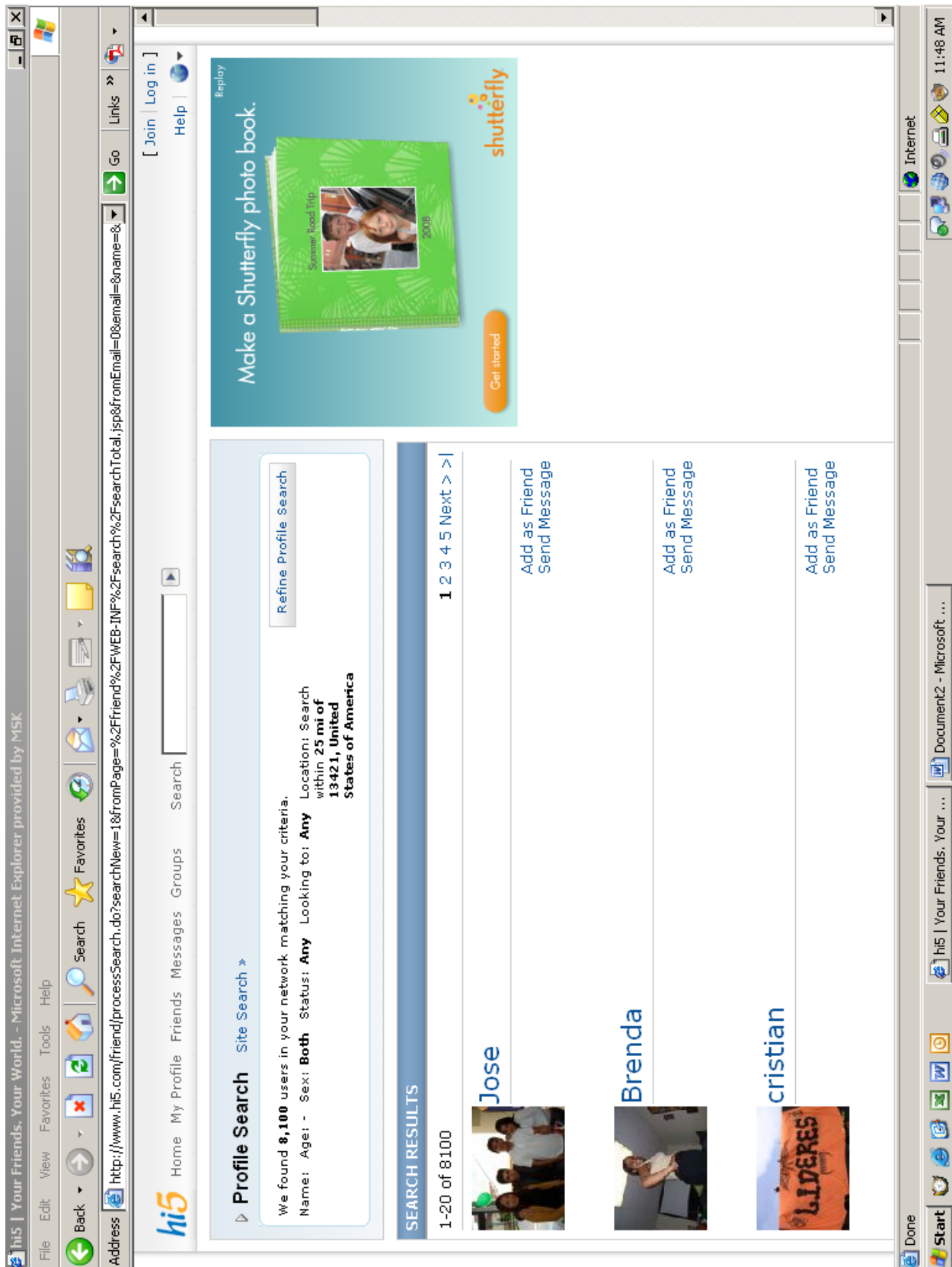
www.Best-Teeth-Whitening.com

No More Dark Circles or Under-Eye Bags

www.darkcircle reducer.com

Internet


Start hi5 | Your Friends. Yo... Document2 - Microsoft ... 11:42 AM



**EXHIBIT 4**



30 seconds to Mars - The Kill



**About this Video**  
 30 seconds to mars - The kill  
 Uploaded Nov 30, 2006 by Kelly  
 United States of America  
 Music  
 Length: [4:52]  
 Views: 4659  
 Tags: the kill, 30 seconds to mars, music video, rock

Kelly's channel ( 82 Videos )  
[Subscribe to Channel](#)

**SEARCH RESULTS FOR 30 SECONDS TO MARS**

- 30 seconds to Mars - The Kill  
 Uploaded by Kelly  
 Length: 4:52
- 30 seconds to mars- The Kill  
 Uploaded by Hazel  
 Length: 4:40
- 30 Seconds To Mars - The Kill  
 Uploaded by Ishma  
 Length: 4:52
- 30 Seconds to Mars - The Kill  
 Uploaded by x 'PЕTИT-Аи...  
 Length: 4:48
- 30 Seconds to Mars - Attack  
 Uploaded by x 'PЕTИT-Аи...  
 Length: 3:12

Rate This Video: ★★★★★ Average Rating: ★

URL: <http://www.hi5.com/friend/video/displ>  
 Embed: `<script language="javascript" src="htt`

**Comments**  
 Viewing 1-10  
[Post a Comment](#)

Comment by Mishel Feb 23, 2008 8:19 PM

hi5 - Kelly - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Home Search Favorites

Address <http://www.hi5.com/friend/102915247-friends-profile.html> Go Links

hi5 Home My Profile Friends Messages Groups Search [Join | Log in] Help

**Kelly :: Profile** (628 views)

Profile Friends Photos Scrapbook Journal Groups Applications

Status: relationships is hard work...if you think it is, suppose to be like that, then you don't want a relationship. Give me the heartache... - Comment

http://blackdragon939.hi5.com/ Send it to your friends

View All 113 Photos

Add as a Friend Send Message Leave Comment Add to Favorites

Location: Richmond Hill, NY

Language: English

Stats: 299 Friends 36 Profile Comments 63 Photo Comments 11 Faves 13 Scraps

Joinins (View all 10)  
 Jul. 30: Words  
 Jul. 30: Hypnosis  
 Jul. 30: Mystery

You are currently using a custom skin. Custom skins make your profile vulnerable to security issues and your account can potentially be compromised. In order to make your account secure, please replace your custom skin with one of our official skins.  
[Skin my Profile](#)

Friends  
 View all 299 friends

Andrea abbi Janella Jason Travis

Done, but with errors on page.

Start hi5 - Kelly - Microsoft ... Internet 2:25 PM

**EXHIBIT 5**



hi5 - Video - Incubus - Drive - Windows Internet Explorer provided by EMI Music Publishing

http://hi5.com/friend/video/displayViewVideo.do?videoId=3409315&ownerId=11597810


hi5 - Video - Incubus - Drive

hi5 Search:  GO

Home My Profile Friends Messages Video Schools Colleges Groups Search

Main Top Videos Top Channels Upload Music Comedy Movies User Videos All Channels

### Incubus - Drive



Incubus "Drive" Make Yourself Immortal/Epic Director: Phil Harder

00:09 / 03:56

Add to My Profile Email It! Share It! Add To Favorites

Rate This Video: ☆☆☆☆☆ Average Rating: ☆

#### About this Video

Incubus - Drive

Uploaded Mar 13, 2007 by DarkAngel United States of America

Category: Music Length: [03:56] Views: 5512

Tags: incubus - drive

DarkAngel's channel ( 300 Videos )

Subscribe to Channel

#### RELATED VIDEOS

Incubus - Pardon Me (Live)  
Uploaded by AnduaN  
Length: 03:44

Incubus - pistola (live)  
Uploaded by Fillipe  
Length: 04:10

---

hi5 - Video - Incubus - Stellar - Windows Internet Explorer provided by EMI Music Publishing

http://hi5.com/friend/video/displayViewVideo.do?videoId=4210307&ownerId=11597810


hi5 - Video - Incubus - Stellar

hi5 Search:  GO

Home My Profile Friends Messages Video Schools Colleges Groups Search

Main Top Videos Top Channels Upload Music Comedy Movies User Videos All Channels

### Incubus - Stellar



Incubus "Stellar" Make Yourself Epic/Immortal Director: Phil Harder

00:07 / 03:24

Add to My Profile Email It! Share It! Add To Favorites

Rate This Video: ☆☆☆☆☆ Average Rating: ☆

#### About this Video

Incubus - Stellar

Uploaded Apr 12, 2007 by DarkAngel United States of America

Category: Music Length: [03:24] Views: 1475

Tags: incubus - stellar

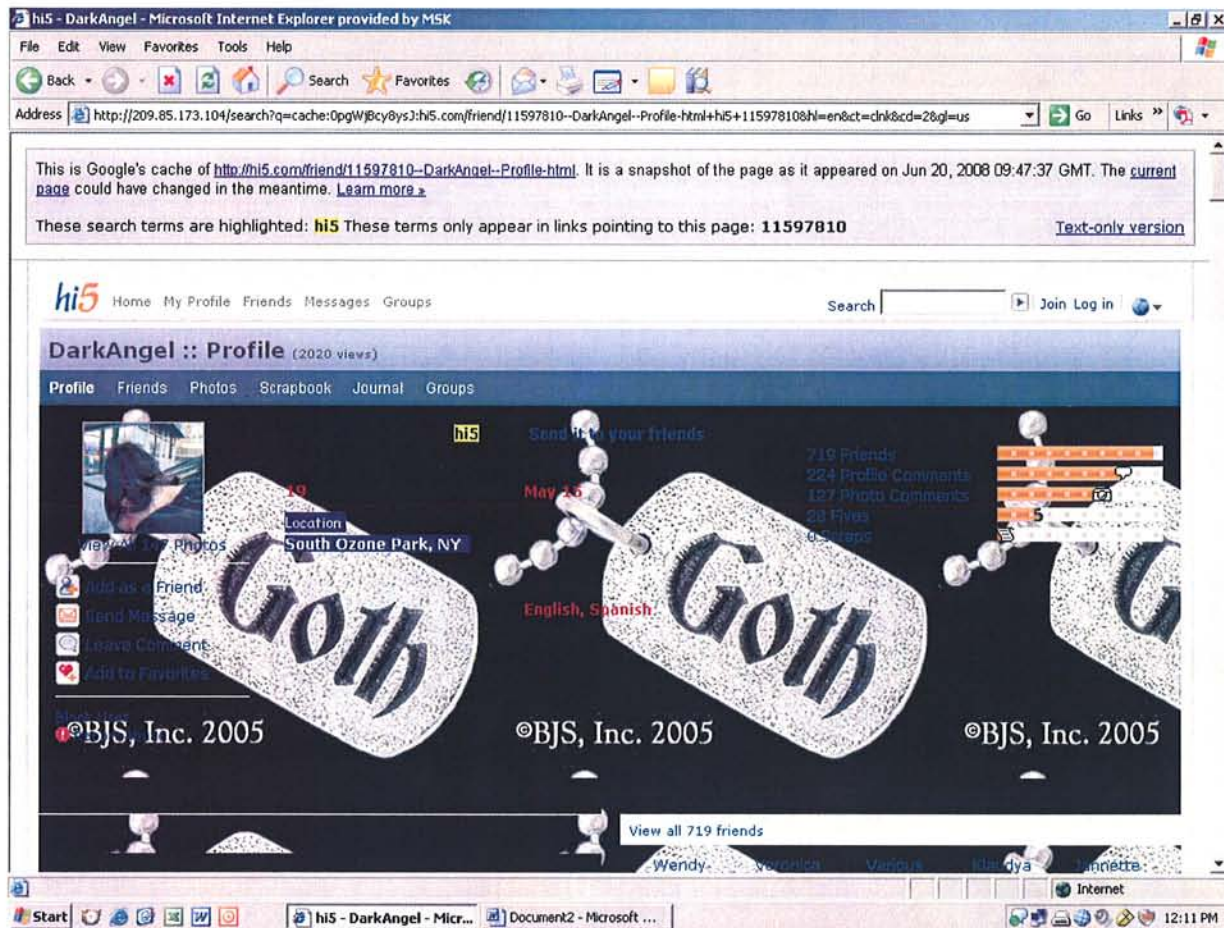
DarkAngel's channel ( 300 Videos )

Subscribe to Channel

#### RELATED VIDEOS

Incubus - Pardon Me (Live)  
Uploaded by AnduaN  
Length: 03:44

Drive - Incubus  
Uploaded by Nice  
Length: 03:42



## **EXHIBIT 6**

hi5 - Groups - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

Go Links

Name/Keyword new york

Category Any Category






Country United States of America

Language Any Language

SEARCH RESULTS

1-20 of 14963

1 2 3 4 5 Next > >|

	<p><b>Dan Brown</b></p> <p>556 Members · 189 Messages · 0 Photos</p> <p>New York Times Best Seller</p>	<p>Created Dec 25, 2004</p> <p>Last Updated Aug 13, 2008 7:31 PM</p>
	<p>... New York Minute...</p> <p>57 Members · 5 Messages · 0 Photos</p> <p>...</p>	<p>Created Apr 14, 2005</p> <p>Last Updated Aug 12, 2008 6:12 AM</p>
	<p><b>New York</b></p> <p>6437 Members · 2121 Messages · 24 Photos</p> <p>For all who live in NY State to chat@!</p>	<p>Created Jan 19, 2004</p> <p>Last Updated Aug 14, 2008 1:00 AM</p>
	<p><b>Guyanese In New York</b></p> <p>2498 Members · 357 Messages · 6 Photos</p> <p>This is a group for Guyanese in New York and Guyana to interact. Others that are interested are also welcomed to join.</p>	<p>Created Jul 17, 2004</p> <p>Last Updated Aug 13, 2008 9:58 AM</p>
	<p><b>New York &amp; New Jersey</b></p>	<p>Created Jul 31, 2004</p>

Get the Next Generation of Smileys!

Internet

Start

Done

hi5 - Groups - Microsoft Internet Explorer provided by MSK

10:52 AM



hi5 - Groups - Cities and Neighborhoods - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help


Home My Profile Friends Messages Groups Search

**hi5**


**Name/Keyword** new york **Category** Cities and Neighborhoods **Country** United States of America **Language** Any Language

**SEARCH RESULTS**


1-20 of 1663 1 2 3 4 5 Next > >|




**Guyanese In New York**  
 2498 Members · 357 Messages · 6 Photos  
 This is a group for Guyanese in New York and Guyana to interact. Others that are interested are also welcomed to join.  
 Created Jul 17, 2004  
 Last Updated Aug 13, 2008 9:58 AM



**New York Desiz**  
 311 Members · 49 Messages · 0 Photos  
 This is a friends group. If you are from New York and are looking forward to make friends, find and meet new people.. This is the place to be.. So Join in Now..  
 Created Dec 28, 2004  
 Last Updated Jul 20, 2008 3:54 PM



**Albany New York Fun**  
 301 Members · 50 Messages · 0 Photos  
 For people that want to have fun in and around Albany, New York. 18 and over please. Spammers and consistant flammers be gone. Open forum.  
 Created Jan 14, 2005  
 Last Updated Jul 23, 2008 6:17 PM




**New York City**  
 Last Updated Aug 6, 2008

Done Start

Internet

11:14 AM

**FREE Glitter Graphics**  
 profile-pimp.net



hi5 - Groups - Cultures and Community - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword "new-york" Category Cultures and Community Country United States of America Language Any Language

**SEARCH RESULTS**

1-20 of 147 1 2 3 4 5 Next > >|

 <p><b>Boricuas en New York!!!</b> 32 Members · 6 Messages · 0 Photos Boricuas que vivimos en New York que mantenemos nuestro pass en alto!!</p>	<p>Created Dec 29, 2004 Last Updated Aug 3, 2008 6:47 AM</p>
 <p><b>New York</b> 6438 Members · 2121 Messages · 24 Photos For all who live in NY State to chat@!</p>	<p>Created Jan 19, 2004 Last Updated Aug 14, 2008 1:07 PM</p>
 <p><b>Bangladeshie in NEW YORK CITY</b> 11 Members · 2 Messages · 0 Photos priedddd bangladesssssssssssssss</p>	<p>Created May 20, 2005 Last Updated Jul 17, 2007 6:27 PM</p>
 <p><b>DOMINICANS FROM NEW YORK CITY</b> 1887 Members · 326 Messages · 15 Photos IF YOUR FROM NYC AND YOUR A DOMINICAN , PLEASE HOLLA BACK.</p>	<p>Created Jul 19, 2004 Last Updated Aug 14, 2008 11:16 AM</p>

University of Phoenix  
The education you want.  
The way you want it.

Business  
Criminal Justice  
Education  
Health Care  
Management  
Technology

Earn your degree while you work.

Start Internet

hi5 - Groups - Cities and Neighborhoods - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

Join Log in Help

hi5 Home My Profile Friends Messages Groups Search

Name/Keyword "new-york"

Category Cities and Neighborhoods


Country United States of America

Language Any Language

1 2 3 4 5 Next > >|


### SEARCH RESULTS

1-20 of 136




**NJ 07093**  
52 Members · 6 Messages · 0 Photos  
Friends in West New York, NJ

Created May 19, 2005  
Last Updated Jul 15, 2008 5:43 PM




**Guyanese In New York**  
2499 Members · 357 Messages · 6 Photos  
This is a group for Guyanese in New York and Guyana to interact. Others that are interested are also welcomed to join.

Created Jul 17, 2004  
Last Updated Aug 14, 2008 1:07 PM




**New York Desiz**  
311 Members · 49 Messages · 0 Photos  
This is a friends group. If you are from New York and are looking forward to make friends, find and meet new people.. This is the place to be.. So Join in Now..

Created Dec 28, 2004  
Last Updated Jul 20, 2008 3:54 PM



**Albany New York Fun**  
301 Members · 50 Messages · 0 Photos  
For people that want to have fun in and around Albany, New York. 18

Created Jan 14, 2005  
Last Updated Jul 23, 2008 6:17 PM



**University of Phoenix**  
The education you want.  
The way you want it.

Business  
Criminal Justice  
Education  
Health Care  
Management  
Technology

Earn your degree while you work.

Start Internet

hi5 - Groups - Cities a... Microsoft Word

1:24 PM

hi5 - Groups - Alumni, Schools and Education - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help





Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

**Name/Keyword** new york **Category** Alumni, Schools and Education **Country** United States of America **Language** Any Language

**SEARCH RESULTS**

1-20 of 2054 1 2 3 4 5 Next > >|

 <p><b>Amateur Boxers Of New York</b> 9 Members · 2 Messages · 0 Photos</p> <p>THIS GROUP.....IS FOR ALL MA FRIENDS.....AND ALL MEMBERS OF HI5.....ALL BOXERS,BOWLERS AND SCHOOL GIRLS AND BOYZ FROM NEW YORK AND EVERYWHERE ARE WELCOME</p>	<p>Created Jun 6, 2005 Last Updated Apr 11, 2008 6:02 AM</p>
 <p><b>CUNY - City University of New York</b> 1346 Members · 308 Messages · 1 Photos</p> <p>Because CUNY IDs usually get you into any of its university and allows you to join the activities from one school to the next and use their computer labs as well. You don't have to have to be a C...</p>	<p>Created Feb 8, 2004 Last Updated Aug 13, 2008 1:09 AM</p>
 <p><b>High School students of New York</b> 3 Members · 0 Messages · 0 Photos</p> <p>This group is for people who go to school in New York or would like to go to school in New York.. You have to be in at least 8th grade or gettin ready to go to school or you will be kicked out of this...</p>	<p>Created May 25, 2005 Last Updated May 15, 2008 1:05 PM</p>
 <p><b>New York University</b> 443 Members · 30 Messages · 1 Photos</p> <p>People who attend or attended NYU</p>	<p>Created Aug 10, 2004 Last Updated Aug 12, 2008 9:36 AM</p>

Opening page http://view.atdmt.com/VON/view/107614302/direct/01?click=http://adopt.specificclick.net/lnk.sm?apld=50674;545

Start hi5 - Groups - Alumni... Document5 - Microsoft ...

Internet 10:56 AM



hi5 - Groups - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword  Category  Country  Language

**SEARCH RESULTS**

1-20 of 260 1 2 3 4 5 Next > >|

 <p><b>CoLoMbIaNs In NYC</b> 23 Members · 3 Messages · 0 Photos Its a group that allows Colombians In NYC to communicate</p>	<p>Created Apr 19, 2005 Last Updated Aug 2, 2008 1:34 PM</p>
 <p><b>New York City</b> 416 Members · 47 Messages · 0 Photos if you love nyc join this group</p>	<p>Created Aug 7, 2005 Last Updated Aug 13, 2008 6:53 AM</p>
 <p><b>NYC</b> 364 Members · 29 Messages · 0 Photos NYC &amp; everybody else</p>	<p>Created May 20, 2005 Last Updated Jun 30, 2008 10:28 PM</p>
 <p><b>DOMINICANS FROM NEW YORK CITY</b> 1886 Members · 326 Messages · 15 Photos IF YOUR FROM NYC AND YOUR A DOMINICAN , PLEASE HOLLA BACK.</p>	<p>Created Jul 19, 2004 Last Updated Aug 13, 2008 2:51 AM</p>

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Use the Money for:

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- Vacations
- Anything you Need!

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Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

Go Links

**SEARCH RESULTS**

1-20 of 205

**Name/Keyword**  **Category**  **Country**  **Language**

**Canarsie, Brooklyn**  
49 Members · 6 Messages · 0 Photos  
@~~~~Welcome to CaNaRsIe~~~~@  
Created May 24, 2006  
Last Updated May 31, 2008  
9:33 AM

**\*\*Brooklyn\*\***  
177 Members · 21 Messages · 1 Photos  
For all the people that are reppin the Bk.  
Created Feb 14, 2005  
Last Updated Aug 1, 2008  
11:57 AM

**BROOKLYN**  
470 Members · 40 Messages · 0 Photos  
WHATS CRACCN THIS YA BOY CALHOON COMING STRAIGHT OUTTA BROOKLYN NY...REPIN THE 718.  
Created May 17, 2005  
Last Updated Aug 6, 2008  
7:37 PM

**New York City People Representing Manhattan,Queens...**  
893 Members · 146 Messages · 1 Photos  
This is a room where all members, from New York City to come Chill Brooklyn style, no babylonians please only golden hearts and clean hands.Have Fun  
Created Jul 4, 2004  
Last Updated Aug 13, 2008  
1:19 AM

**Think You're Too Busy to Go Back to School? Think Again!**

Select Your State  
Alabama  
Alaska  
Arizona  
Arkansas  
California

[See Degrees Now](#)

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Start

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Internet

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Home My Profile Friends Messages Groups Search

**hi5**

**Name/Keyword**  **Category**  **Country**  **Language**

**SEARCH RESULTS**

1-2 of 2

	<p><b>Brooklyn, New York City</b>            1826 Members · 279 Messages · 5 Photos            yea baby, the city is tha best it's tha place 2 be!! ( shout out 2 B.I.G)</p>	<p>Created Aug 10, 2004            Last Updated Aug 13, 2008            9:28 PM</p>
	<p><b>brooklyn rools</b>            6 Members · 1 Messages · 0 Photos            evrybody waz in brooklyn is invited to join us</p>	<p>Created Jul 26, 2005            Last Updated Aug 1, 2008            1:56 PM</p>

1-2 of 2

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Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword  Category  Country  Language

**SEARCH RESULTS**

1-20 of 140 1 2 3 4 5 Next > >|

	<b>Bronx-Manhattan SDA School</b> 5 Members · 0 Messages · 0 Photos If you were, at some point, a student of Bronx-Manhattan SDA School then join us and share the fun	Created Mar 30, 2005 Last Updated Jul 13, 2008 12:35 PM
	<b>BRONX</b> 1016 Members · 99 Messages · 1 Photos Dis group is for all those ppl's reppin the BX to the fullest.	Created May 28, 2005 Last Updated Aug 13, 2008 1:32 AM
	<b>the Bronx</b> 263 Members · 47 Messages · 5 Photos The Boogie Down. The Bronx. For all the bronxites, or people who just love the Bronx.	Created Dec 26, 2004 Last Updated Jul 29, 2008 12:31 PM
	<b>Bronx (foup)</b> 50 Members · 15 Messages · 0 Photos Di Bronx..... e o fino.. e o xarro... e o Bronx em tdo o lado!!!!	Created Feb 24, 2005 Last Updated Jul 14, 2008 9:00 AM

Internet

Start hi5 - Groups - - Micro... Document5 - Microsoft ... 10:58 AM

hi5 - Groups - - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword  Category  Country  Language

**SEARCH RESULTS**

1-20 of 628 1 2 3 4 5 Next > >|

 <p><b>New York</b> 6437 Members · 2121 Messages · 24 Photos For all who live in NY State to chat@!</p>	<p>Created Jan 19, 2004 Last Updated Aug 14, 2008 1:00 AM</p>
 <p><b>ALBANY, NY-THE GREAT CAPITAL CITY OF NEW YORK STATE</b> 23 Members · 6 Messages · 0 Photos HI ALBANY, NY-STOP IN HERE TO SAY HI, POST INFO ABOUT ALBANY, CHAT, MEET NEIGHBORS ETC.</p>	<p>Created Nov 9, 2004 Last Updated Aug 3, 2008 1:00 AM</p>
 <p><b>Albany New York Fun</b> 301 Members · 50 Messages · 0 Photos For people that want to have fun in and around Albany, New York. 18 and over please. Spammers and constant flammers be gone. Open forum.</p>	<p>Created Jan 14, 2005 Last Updated Jul 23, 2008 6:17 PM</p>
 <p><b>Albany College</b> 95 Members · 10 Messages · 0 Photos</p>	<p>Created Jun 11, 2005 Last Updated Jun 21, 2008 4:22 PM</p>

**Get the Next Generation of Smileys!**

Internet

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Done 10:54 AM

**EXHIBIT 7**

# Terms of Service

Updated July, 2008

Welcome to hi5 - the place where friends meet.

By using the hi5 community (the "**Community**") that hi5 Networks, Inc. ("**hi5**", "**us**", or "**we**") operates on our website, currently located at <http://www.hi5.com> (the "**Website**"), you agree to be bound by these Terms of Service (this "Agreement"), whether or not you register as a member of the hi5 Community ("**Member**"). The hi5 services (the "**Services**") consist of the Community and the Website.

If you wish to become a Member, communicate with other Members, and make use of the Service, read this Agreement and follow the instructions in the registration process. This Agreement sets out the legally binding terms for your membership and may be modified by hi5 from time to time. Any modifications shall be effective upon posting by hi5 on the Website. You may also receive a copy of this Agreement by emailing us at: [help@hi5.com](mailto:help@hi5.com), Subject: "Terms of Service Agreement".

In addition, when using particular functionalities and features that are part of the Services, you may be subject to additional guidelines, terms, or rules applicable to such functionalities and features ("**Additional Terms**"), which may be posted from time to time. All such Additional Terms of hi5 and the hi5 Privacy Policy ([www.hi5.com/friend/displayPrivacy.do](http://www.hi5.com/friend/displayPrivacy.do)) are hereby incorporated by reference into this Agreement.

If such additional functionalities and features are provided to us by any of our partners (such as, but not limited to, media players for content provided by our licensors) the additional terms that govern your use of such functionalities and features are not incorporated into this Agreement, but shall govern your use of such functionalities and features and you hereby agree to comply with and be bound by such terms as a condition to your access and use of such functionalities and features.

1. **ELIGIBILITY.** THE SERVICES ARE INTENDED SOLELY FOR ACCESS AND USE BY INDIVIDUALS THAT ARE THIRTEEN (13) YEARS OF AGE OR OLDER. BY ACCESSING AND USING THE SERVICES, YOU ARE CERTIFYING THAT YOU ARE AT LEAST THIRTEEN (13) YEARS OLD. By using the Services, you represent and warrant that you have the right, authority, and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement. If you are merely surfing or browsing through the Website and have not yet registered to become a Member, your use of the Website is still subject to this Agreement; if you do not agree to this Agreement, do not use the Services.

2. **PASSWORD.** When you sign up to become a Member, you will also be asked to choose a username and a password for your Member profile. You are entirely responsible for maintaining the confidentiality of your password. You agree not to use the Member profile, username, or password of another Member at any time. You agree to notify us immediately if you suspect any unauthorized use of your Member profile or access to your password. You are solely responsible



for any and all use of your Member profile.

3. **TERM.** This Agreement will remain in full force and effect while you use the Services and/or are a Member. You may terminate your membership at any time, for any reason by following the instructions on the "Help" pages, or upon receipt by hi5 of your written or email notice of termination. hi5 may terminate your access to the Website. hi5 may terminate your membership for any reason effective upon sending notice to you at the email address you provide in your application for membership or such other email address as you may later provide to hi5. If hi5 terminates your membership in the Community because you have breached the Agreement, you will not be entitled to a refund of any unused subscription fees, if any. Even after this Agreement is terminated, the following provisions of this Agreement will remain in effect: Sections 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

4. **NON-COMMERCIAL USE BY MEMBERS.** The Services are for the personal use of individual Members only, and may not be used in connection with any commercial endeavors. This includes providing links to other websites, whether deemed competitive to hi5 or otherwise. Organizations, companies, and/or businesses may not become Members of hi5 and should not use the hi5 Services for any purpose. Illegal and/or unauthorized uses of the Services, including unauthorized framing of or linking to the Website will be investigated, and appropriate legal action will be taken.

5. **PROPRIETARY RIGHTS IN THE SERVICE.** hi5 owns and retains all proprietary rights in the Services. The Services contain the copyrighted material, trademarks, and other proprietary information ("**Intellectual Property**") of hi5, and its licensors, including other hi5 Members. Except for Intellectual Property which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or sell any such Intellectual Property and the provision of such Intellectual Property to you through the Services does not transfer to you or any third party any rights, title or interest in or to such Intellectual Property, including, without limitation, any intellectual property rights in any Content and material included therein.

6. **CONTENT POSTED ON THE SERVICES.** You understand and agree that hi5 may (but is not obligated to) review any classified ads, content, communication, information, Intellectual Property, material, messages, photos, videos, URLs, profiles and the like (collectively, "**Content**") that is uploaded, published or displayed (hereinafter, "**posted**") on the Services and delete or refuse to take online any such Content, including, without limitation, any Content that in the sole judgment of hi5 violates this Agreement or which might be offensive, inappropriate, illegal, or that might violate the rights, harm, or threaten the safety of other Members or third parties. You are solely responsible for the Content that you post on the Services, or transmit to other Members or third parties. By posting Content to any area of the Services, you automatically grant, and you represent and warrant that you have the right to grant, to hi5 an irrevocable, perpetual, non-exclusive, royalty-free and fully paid, worldwide license to reproduce, distribute, publicly display and perform (including by means of a digital audio transmission), and otherwise use Content and to prepare derivative works of, or incorporate into other works, such Content, and to grant and authorize sublicenses of the foregoing. In addition, you represent and warrant that you have the right to post the Content and you will not post any illegal or prohibited Content and will not infringe, misappropriate, violate or contravene any third party rights (including, without limitation, any intellectual property rights). The following is a partial list of the kind of Content that is illegal or prohibited on the Website ("**Prohibited Content**"). hi5 reserves the right (but is not obligated) to investigate and to take appropriate legal action in its sole discretion against anyone who violates this provision, including without limitation, removing the offending Content from the Service and terminating the membership of such violators.



Prohibited Content includes Content that:

- (a) is patently offensive to the online community, such as Content that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- (b) harasses or advocates harassment of another person;
- (c) involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing or "spamming";
- (d) promotes information that you know is false, misleading or that promotes illegal activities or conduct that is illegal, abusive, threatening, obscene, defamatory or libelous;
- (e) promotes an illegal and/or unauthorized ("**pirated**") copy of another person's copyrighted work (whether marked as such, or not), such as, but not limited to, providing pirated computer programs or links to them, providing information to circumvent copy-protection mechanisms, or providing pirated music, video or other pirated Content, or links to such pirated music, video files, or files that contain such other pirated Content;
- (f) contains restricted or password only access pages, or hidden pages or images (those not linked to or from another accessible page);
- (g) displays pornographic or sexually explicit material of any kind and in any form;
- (h) provides material that exploits people under the age of 18 in a sexual or violent manner, or solicits personal information from anyone under 18;
- (i) provides instructional information about illegal activities such as, but not limited to, making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses;
- (j) solicits passwords or personal identifying information of any kind for commercial or unlawful purposes from other users; and engages in commercial activities and/or commercial sales without our prior written consent, including, without limitation, contests, sweepstakes, barter, advertising, and pyramid schemes;
- (k) constitutes, promotes, or is used primarily for the purpose of dealing in: counterfeit goods, items subject to US embargo, illegal drugs and paraphernalia, stolen products and items used for theft, unlicensed trade or dealing in stocks or securities, gambling items, professional services regulated by state licensing regimes or non-transferable items; or
- (l) otherwise violates the terms of this Agreement or creates liability for hi5.

You must use the Services in a manner consistent with any and all applicable laws and regulations. You may not engage in advertising to, or solicitation of, other Members to buy or sell any products or services through the Services, except as to the extent expressly allowed by hi5 in specific sections of the Services. You may not transmit any chain letters or junk email to other Members or other parties. Although hi5 cannot monitor the conduct of its Members off the

Services, it is also a violation of these rules to use any information obtained from the Services in order to harass, abuse, or harm another person, or in order to contact, advertise to, solicit, or sell to any Member without their prior explicit consent. In order to protect our Members from such advertising or solicitation, hi5 reserves the right to restrict the number of emails and other communications (including sharing of Content) which a Member may send to other Members in any twenty-four (24) hour period to a number which hi5 deems appropriate in its sole discretion.

**7. YOUR MEMBER PROFILE.** Any Content used for or photographs posted by you in your Member profile may not contain nudity, violence, sexually explicit, or offensive subject matter. You may not post a photograph of another person without that person's permission.

**8. COPYRIGHT POLICY.** You may not post, distribute, or reproduce in any way any copyrighted material, trademarks, or other proprietary information without obtaining the prior written consent of the owner of such proprietary rights. Without limiting the foregoing, if you believe that your work has been copied and posted on the Services in a way that constitutes copyright infringement, please provide our Copyright Agent with the following information: an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; a description of the copyrighted work that you claim has been infringed; a description of where the material that you claim is infringing is located on the Website; your address, telephone number, and email address; a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. hi5's Copyright Agent for notice of claims of copyright infringement can be reached by writing the following:

hi5 Networks, Inc.  
Attn: Copyright Agent  
55 2nd St., Suite 300  
San Francisco, CA 94105  
copyrightagent@hi5.com

**9. MEMBER DISPUTES.** Your interactions with other Members in connection with the Services or with advertisers, including, without limitation, payment and delivery of goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and the other Members or the advertiser. You agree that hi5 will not be responsible for any loss or damage incurred as the result of any such dealings or with respect to any other Member's use or disclosure of your personally identifiable information. If there is a dispute between you and any third party (including, without limitation, any Member), hi5 is under no obligation to become involved; however, we reserve the right, but have no obligation, to monitor disputes between you and other Members.

**10. THIRD PARTY CONTENT.** Content from other Members, advertisers, and other third parties may be made available to you through the Services. Because we do not control such Content, (a) you agree that we are not responsible for any such Content and (b) we make no guarantees about the accuracy, currency, suitability, or quality of the information in such Content, and we assume no responsibility for unintended, objectionable, inaccurate, misleading, or unlawful Content made available by other Members, advertisers, and other third parties.

**11. RELEASE.** To the extent permitted under applicable laws, you hereby release hi5 from any

liability related to: (a) any incorrect or inaccurate Content posted on the Services, whether caused by any user of the Services or Member, or by any of the equipment or programming associated with or utilized in the Services; (b) the conduct, whether online or offline, of any user of the Services or Member; (c) any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of email or Content players on account of technical problems or traffic congestion on the Internet or at any website, or combination thereof, including injury or damage to user's and/or Member's or to any other person's computer related to or resulting from participating or downloading materials in connection with the Services; (d) any loss or damage caused by Content posted on the Services or transmitted by and to Members, or any interactions between users of the Website and/or Members, whether online or offline; and (e) any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, Website user or Member communications.

If you are a California resident, you hereby waive California Civil Code Section 1542, which states: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."**

**12. DISCLAIMER.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, THE SERVICES ARE PROVIDED "AS-IS" AND AS AVAILABLE AND HI5 EXPRESSLY DISCLAIMS ANY WARRANTY AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, ACCURACY, OR NON-INFRINGEMENT AND HI5 DOES NOT GUARANTEE AND DOES NOT PROMISE (A) ANY SPECIFIC RESULTS FROM THE USE OF THE SERVICES; (B) THAT THE SERVICES WILL MEET YOUR REQUIREMENTS; (C) THAT THE SERVICES WILL BE AVAILABLE ON AN UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE BASIS; OR (C) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE. HI5 DOES NOT ASSUME ANY OBLIGATION TO MONITOR ACTIVITIES ON THE SERVICE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**13. LIMITATION ON LIABILITY.** TO THE EXTENT PERMITTED UNDER APPLICABLE LAWS, HI5 SHALL NOT BE LIABLE TO YOU, OR ANY THIRD PARTY, FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES (INCLUDING ALSO LOST PROFITS) ARISING FROM YOUR USE OF THE SERVICES, EVEN IF HI5 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, HI5'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE GREATER OF (1) ANY AMOUNT PAID BY YOU TO HI5 FOR THE SERVICES; AND (2) FIFTY U.S. DOLLARS (US\$50).

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**14. U.S. EXPORT CONTROLS.** Any software provided by hi5 through the Services (the **"Software"**) is further subject to United States export controls. No Software may be downloaded from the Services or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, Sudan, or any other Country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated

Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

15. **GOVERNING LAW AND ARBITRATION.** This Agreement shall be governed by the laws of the State of California without giving effect to any conflict of laws principles that may provide the application of the law of another jurisdiction. You and hi5 agree to submit to the jurisdiction of, and agree that venue is proper in, the state courts located in San Francisco, California (USA) and the federal courts located in the Northern District of California (USA) in such legal action or proceeding. Any claim or dispute (excluding claims for injunctive or other equitable relief as set forth below) in connection with this Agreement where the total amount of the award sought is less than five thousand U.S. Dollars (US\$ 5,000.00) may be resolved in a cost effective manner through binding non-appearance-based arbitration, at the option of the party seeking relief. Such arbitration shall be initiated through an established alternative dispute resolution provider ("**ADR Provider**") that offers arbitration as set forth in this section and under the rules of such ADR Provider, except to the extent such rules are in conflict with this Agreement. The party demanding arbitration will propose an ADR Provider and the other party shall not unreasonably withhold consent to use such ADR Provider. The ADR Provider and the parties must comply with the following rules: a) the arbitration shall be conducted by telephone, online and/or be solely based on written submissions, the specific manner shall be chosen by the party initiating the arbitration; b) all arbitration proceedings shall be held in English, or any other language the parties may mutually agree upon; c) the arbitration shall not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and d) any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Each party shall bear its own costs (including attorney fees) and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the ADR Provider. Notwithstanding the foregoing, hi5 may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction. Please note that the laws of the jurisdiction where you are located may be different from California law. You shall always comply with all the international and domestic laws, ordinance, regulations and statutes that are applicable to your use of the Services.

16. **ELECTRONIC COMMUNICATIONS.** The communications between you and hi5 use electronic means, whether you visit the Website or send us emails, or whether hi5 posts notices on the Services or communicates with you via email. For contractual purposes, you (a) consent to receive communications from hi5 in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that hi5 provides to you electronically satisfy any legal requirement that such communications would satisfy if it were in writing. The foregoing does not affect your non-waivable rights.

17. **INDEMNITY.** You agree to indemnify and hold hi5, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above.

18. **OTHER.** This Agreement contains the entire agreement between you and hi5 regarding the use of the Services. If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect. Notwithstanding any other provisions herein, no party will be deemed as a third-party beneficiary to this Agreement and a third party (including another Member) who is not a party to this Agreement has no right to enforce any term of this Agreement. If any provision of this Agreement is found to be invalid or unenforceable, such

provision will be changed and interpreted to accomplish the objectives to the greatest extent possible under any applicable law and the remaining provisions will continue in full force and effect. The failure of hi5 to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. Please contact us with any questions regarding this Agreement.

19. **COPYRIGHT/TRADEMARK INFORMATION.** Copyright © 2005 - 2006, hi5. All rights reserved. The trademarks, logos and service marks ("Marks") displayed on the Services are our property or the property of other third parties. You are not permitted to use these Marks without our prior written consent or the consent of such third party which may own the Mark.

**EXHIBIT 8**



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[Press Releases](#) [Media Coverage](#) **About Us** [Timeline](#) [Leadership](#) [Gallery](#)



## About Us

Headquartered in San Francisco, CA, hi5 is one of the world's largest social networks. Alexa® ranks hi5 as a top 20 website globally, and as the #1 social network in 25 countries across Latin America, Europe, Asia and Africa.

hi5 was designed with the global audience in mind, and is

### At A Glance

- 80+ million registered users in over 200 nations
- Nearly 50 million unique monthly users — more than half under age 35
- Avail in 23+ language options; #1 site for global Spanish-language community
- Privately-held company; raised \$250K to launch business, reached profitability within first year; in July 2007, secured \$20M from MDV - Mohr Davidow Ventures to accelerate expansion of company size, service offering and global reach

currently available in 23 language options (with more to come). Whether delivering locally relevant applications and feature translations, offering in-language customer support, or securing regional media partnerships, we strive to provide services that are inviting, useable and meaningful for people in many different countries and cultures around the world.

### How the Service is Used

While circumstances and geography can separate individuals from one another, hi5 helps its members stay connected with friends, family and others that are important to them in a simple, fun and safe online environment. Through the service (which adjusts to deliver information pertinent to

each user), members link to people they've known throughout their lives, while making and maintaining new acquaintances as well. They use hi5 to share photos, send messages, express themselves with profile pages, join discussion groups, explore music and videos, and more — making it easier to learn about what's happening in the lives of the people they care about, regardless of where they live or work.

In supporting this valuable communication, hi5 is also committed to protecting the privacy of its members. The service offers a range of privacy settings and controls that enable members to select how they are viewed and how their information flows through the system.

### The Technology Behind hi5

hi5 operates one of the largest commercial OLTP PostgreSQL installations in the world across hundreds of database and storage servers. Our unique systems store billions of friend relationships and instantly make this information available. To support the network's global reach and a breadth of third party

### Media Contact

PR @ hi5.com  
415-962-7075

### Note:

For Customer Support, please Submit a Question via our [Help section](#).

### More Information

About Us [PDF]  
[Timeline of Milestones](#) [PDF]  
[Leadership](#)  
[Board of Directors](#)  
[Multimedia Gallery](#)  
[Blog](#)  
[Speaking Engagements](#)

support the rapid development and rollout of more social networking applications for hi5 members.

## Leadership

hi5 is led by business and technology architects with extensive experience in online properties. [Click here](#) to review leadership bios.

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## **EXHIBIT 9**

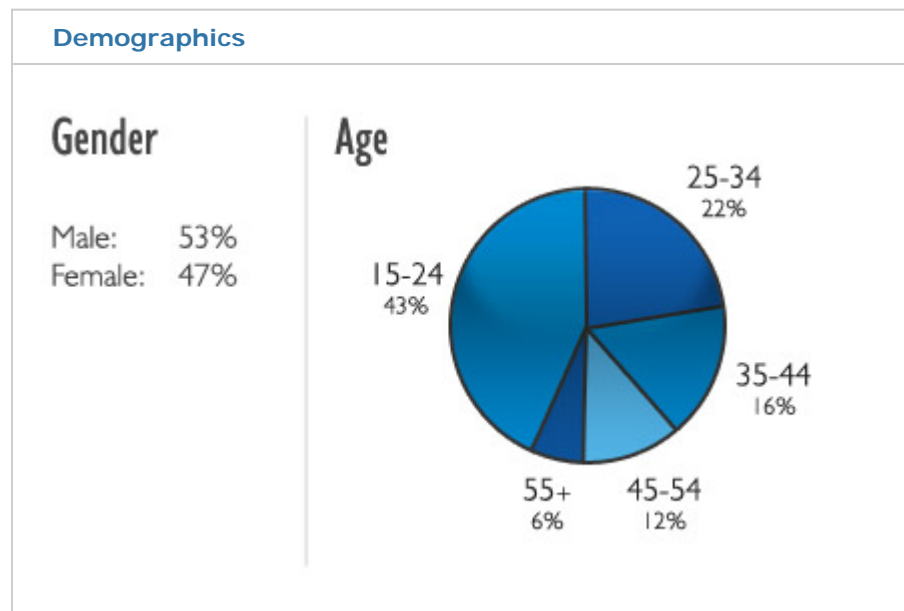
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## Advertise

Worldwide, more than 80 million people have registered accounts with hi5, and the site draws nearly 46 million unique users per month\*. hi5's broad reach and ad-serving platform allows us to provide marketing solutions for global brands as well as national and regional advertisers.

By using IP and profile-based demographic targeting, hi5 delivers advertising messages with precision. We offer a broad range of advertising products: targeted display banners, rich media placements, and custom sponsorships. Contact us for more information and a proposal tailored to your marketing objectives.



\* Unique visitor and demographic info: comScore, April 2008.

## Contact Us

For advertising rates or a customized proposal, please contact the sales office in your region:

### USA, Canada, Asia, Africa, Europe, & Middle East

Brett Finkelstein  
Director, Media Partnerships  
[sales@hi5.com](mailto:sales@hi5.com)  
+1-415-962-7013

### Romania

Calin Rotarus  
[calin.rotarus@arbointeractive.ro](mailto:calin.rotarus@arbointeractive.ro)  
+44 21 316 1020  
<http://www.arbointeractive.ro>

### England & Ireland

Matt Cannon  
eType  
[matt.cannon@initarous.com](mailto:matt.cannon@initarous.com)

### France

Stéphane Pitoun  
Oridian FR SARL  
[france@oridian.com](mailto:france@oridian.com)  
+33 1 47 48 05 64

**Exhibit 9**  
**Page 37**

**Mexico/Central & South America**

Roberto Vassaux  
.FOX  
roberto@puntofox.com  
+502 2363-5870  
<http://www.puntofox.com>

**Italy**

Zion Nahum  
Oridian IT  
italy@oridian.com  
+39 333 5642433  
<http://www.oridian.com>

**Portugal**

Sapo.pt – PT.com  
comercial@co.sapo.pt  
<http://publicidade.sapo.pt>

**Australia**

Dominic Elfer  
Oridian Inc.  
australia@oridian.com  
+61 2 9360 5355  
<http://www.oridian.com>

**Thailand**

Kasamart Neerapatama  
Topspace (Sanook Online)  
kasamart@topspace.com  
+66 81 617 8040  
<http://advertising.sanook.com/site/th/>

**Greece & Cyprus**

Panos E. Kazanelis  
ADWEB  
hi5@adweb.gr  
+30 210 684 3084  
<http://www.adweb.gr>

Visit [hi5.com](http://hi5.com)

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**Exhibit 9**  
**Page 38**

**EXHIBIT 10**

# Customer Case Study



**hi5 Networks**  
**San Francisco, CA**  
**[www.hi5.com](http://www.hi5.com)**

**Industry**  
*Online Services*

## About hi5 Networks

- *Social networking website*
- *#10 most visited website*
- *60 Million Registered Users*
- *4.5 million unique visits/day*
- *200 million pageviews/day*
- *50 Employees Worldwide*

## Key Benefits

- *Single systems management solutions provides complete coverage for all technologies*
- *Combining feature usage metrics with performance provides key insight for capacity planning*
- *Historical trending information and group alerting creates early warning system to avoid outages*
- *Comprehensive management from Hyperic HQ allows team to succeed with less staff*



All Systems Go

## hi5 Networks Grows to Support World's 10th Largest Website With Hyperic HQ

hi5 is a global social networking site where more than 60 million members come to stay in touch with friends, meet new people, create and explore content, and express themselves. Since launching in 2004, the company quickly became one of the fastest growing social networks, and the 10th most highly-trafficked website in the world according to Alexa.

With its 60 million members and 4.5 million unique visitors generating over 200 million page views per day, constant uptime and high performance are absolute musts for hi5.

"Our business, like many other online businesses, is based on our user's experiences. We make money off of paid advertising, and that advertising is based on how many users it reaches. Uptime is critical," said Akash Garg, CTO of hi5. "If our service goes down, we can't serve ads, and we risk adversely affect our users' opinion of our service, causing them to stop coming back to the site. Losing advertising momentarily isn't good, losing users is far worse."

In early 2006, hi5's popularity started to really take off. The IT infrastructure grew increasingly complicated as it scaled to support thousands of new users each day. The potential for problems—downtime, and performance issues—increased alongside the complexity. hi5 had been using a combination of Big Brother and Nagios as their systems monitoring software, which helped the company know when servers were down, but lacked the historical charting perspective to tell them when server performance was starting to degrade. Without the ability to trend performance and use it as a baseline for an early warning system, hi5 couldn't keep up with their rapid growth rate and risked costly outages. They needed a new approach.

## Searching for a Solution

The hi5 IT environment is highly customized, and heterogeneous. It includes multiple terabytes of data and media files stored across an array of PostgreSQL databases and an EXT3 file system. The hi5 application was written in Java and runs on hundreds of Resin application servers and Apache web servers. The data center is filled with machines ranging from Dell Blades, SuperMicros, Dell 8-way Servers – most of which run SuSE Linux.

# Customer Case Study



HYPERIC

All Systems Go

## Environment

- Multiple TBs of Data & Media
- Hundreds of servers with:
  - SuSE Linux
  - Apache Web Servers
  - Resin Application Servers
  - PostgreSQL Databases

## Hyperic HQ Manages

- 25 different technologies
- 17 custom built applications
- 9,000+ managed resources
- 11,000+ metrics per minute

*"Hyperic is like having an invisible team monitoring our systems around the clock, letting our operations team focus on scaling the business."*

**Akash Garg**  
CTO, hi5 Networks

The operations team started to search for alternatives. They examined a number of possibilities, including Uptime and Zenoss. "Most of the other applications out there tried to repeat what Big Brother and Nagios had already done, even down to using the same colored boxes in their UI," described Dan Gorman, Senior Systems Engineer at hi5. "We already had Big Brother and Nagios. What we needed was something better. Hyperic was the standout – bridging the gap between professional open source and commercial software. It had all the features of the big boys, but without the cost and better suited for our specific environment."

## Hyperic Gives hi5 What it Needs to Succeed

In February of 2006, after reading about Hyperic on a simple Google search, the hi5 team signed up for an enterprise trial. They downloaded Hyperic HQ directly from Hyperic's site, and within minutes were using the software to inventory hardware, software and services in the hi5 infrastructure.

Immediately the team recognized that Hyperic provided far more coverage than its predecessors. The HQ product monitored both Resin and PostgreSQL natively – two key technologies that Big Brother did not recognize. Additionally, the team could now see the performance heuristics of their infrastructure over time, which was critical to being able to pinpoint the genesis of a problem. Since HQ was designed to be extensible, the team was able to write additional metric collectors that layered feature usage and business metrics on top of the performance data. The hi5 website serves up a variety of media files including photos, music and video – and the addition of these metrics enable the company to correlate performance with a spike in not just user traffic, but file downloads of the hottest new tunes or raciest new video.

## Hyperic Insight Maximizes Data Center Potential

Over the course of the next year, the hi5 business grew exponentially. However, the team and infrastructure managing it didn't need to, in part because of Hyperic.

Last November, the engineering team at hi5 was rationalizing its feature roadmap with the current production capacity and predicted they would need to increase their server environment by 50%, to support the new feature release. By using Hyperic, the operations team was able to reveal this additional investment was not necessary at that time.

"We knew our environment could handle the new features, we just needed to optimize performance. So we organized sections of the server farm into groups, using the HQ Mixed Groups functionality," said Gorman.

# Customer Case Study



All Systems Go

## About Hyperic Inc.

*Hyperic provides the only open source systems management software purpose-built for the fast-moving online services market. Hyperic's software provides unprecedented cross-stack visibility and helps enterprises to pinpoint, correct and prevent problems at every layer – including hardware, networks, virtualization, middle-ware and applications. Hyperic's technology-neutral approach supports innovation by enabling manageability across technologies in the market today as well as those of tomorrow. Hyperic's software manages online services businesses of all sizes, including hi5 Networks, eHarmony.com, MyNewPlace.com and more.*

## Contact us

Hyperic, Inc.  
www.hyperic.com  
609 Mission Street, 4th Floor  
San Francisco, CA 94105 USA  
phone: 415-541-4975  
fax: 415-541-9785

"We then applied new features and performance improvements systematically to certain groups and proved empirically that we had satisfactory capacity. In fact, we had excess. It wasn't until 6 months later that we needed to increase our server count by 15% to accommodate additional growth. Hyperic helped us make those expensive decisions with confidence."

The same small and talented team has supported hi5's amazing growth without adding additional staff. "Traditionally, large scale IT shops like ours create a full scale Network Operations Center (NOC) that is staffed 24 by 7. With the complex alerting and early information on performance that Hyperic gives us, we haven't had to do that," stated Garg. "Hyperic is like having an invisible team monitoring our systems around the clock which lets our operations team focus on scaling the business."

## hi5 and Hyperic Reach New Heights Together

Since starting with Hyperic, hi5's infrastructure has tripled in size and the complexity of the sites functionality has increased even more. The site was included among the top 100 websites on the Alexa rankings late last year, and the team knew it needed more automation to ensure they could keep pace. Again, they turned to Hyperic.

Capabilities like group alerting became critical. If the site hit a performance threshold, the team couldn't deal with hundreds of separate alerts for each server. Moreover, if they wanted to create a new alert, they didn't want to have to do it hundreds of times. Additionally, the team wanted a single view that they could organize to show the status of recent events, alerts and track performance of groups of resources centrally. This single view would give them a steady picture of the health of their entire environment.

Scale also became a serious consideration, and the team needed to ensure that their management solution could keep pace with their accelerating growth.

"Hyperic 3.0 delivered in spades. We have the Operations Dashboard on a monitor on the wall so everyone who walks by can see our performance. Group alerting and the performance now really reflect a system of scale," said Gorman. "It's not a trivial task to centrally automate the management of several hundred machines. But Hyperic HQ 3.0 did it. Everything is fast."

"Hyperic's commitment to customer service, and track record of solving our IT management problems have been a crucial enabling factor in allowing us to scale to be the 10th largest website in the world," claims Garg. "Their dedication to solving bigger problems better than anyone else is evident in Hyperic HQ. With our size and complexity, I can't imagine ever using anything else but Hyperic for systems management."



**EXHIBIT 11**

[SF bay area craigslist](#) > [san francisco](#) > [sales jobs](#)[email this posting to a friend](#)

**Avoid scams and fraud by dealing locally!** Beware any deal involving Western Union, Moneygram, wire transfer, cashier check, money order, shipping, escrow, or any promise of transaction protection/certification/guarantee. [More info](#)

please [flag](#) with care:[miscategorized](#)[prohibited](#)[spam/overpost](#)[best of craigslist](#)

## Director of Advertising Sales at hi5.com (financial district)

Reply to: [kkanarek@hi5.com](mailto:kkanarek@hi5.com)

Date: 2008-08-04, 2:35PM PDT

Director, Advertising Sales

About hi5

hi5 is one of the world's largest and fastest-growing social networks. Our company is ranked as the #1 social network in 26 nations across Europe, Latin America, the Caribbean, Asia and Africa.

- 80+ million registered members
- 50+ million unique monthly visitors
- Currently available in over 23 languages
- One of the top 20 most-trafficked websites worldwide
- A founding adopter of OpenSocial
- Headquartered in San Francisco, California

Although our work is viewed and used every day by millions of people across the globe, the company is small (currently under 100 employees) and privately held. It's a fun, bright, fast-paced and collaborative place to work.

Located in downtown San Francisco, hi5 is just steps from major public transit lines, including BART and Muni.

About the Position

The Director, Advertising Sales will be responsible for generating direct brand advertising sales from key brand marketers throughout the world. The primary responsibilities are to source, negotiate, close, manage, support and grow display advertising revenue by focusing on brand clients.

The role is fast-paced and requires the daily use of multiple brand ad sales negotiation tactics, pricing strategies (CPM, flat rate), and sourcing techniques. This is a fun, client-facing sales role requiring deep industry expertise, proven sales ability with a particular knack for closing deals, and a broad base of industry contacts. You understand and anticipate how decisions are made, and you'll persistently explore and uncover the business needs of your key clients.

You will work closely with our Director, Media Partnerships and Director, Ad Operations to continuously streamline and improve the sales infrastructure and support processes.

You will be responsible for both managing successful implementations and driving ongoing client satisfaction to ensure renewals. You must be adept at developing productive relationships with key stakeholders with our accounts, and leveraging those relationships to drive our continued success. You must also be highly goal oriented, and demonstrate a track record of working with clients to define and document relationship objectives and manage those objectives over time.

**Exhibit 11**  
**Page 42**

You will report to our VP of Business Development and Strategy. Upon meeting stretch revenue goals and demonstrated capacity for management, you will be responsible for building and managing an Inside Sales Team for hi5.

#### Responsibilities:

- Drive internal brand display advertising sales and exceed revenue goals
- Manage and grow existing relationships to maximize revenues (campaign management against overall client objectives)
- Source new partners, set account criteria and negotiate scalable contracts
- Develop and fine tune sales materials

#### Requirements:

- 4 Year college degree; business degree a plus
- 5 – 7 years experience in a relevant online Advertising Sales / Business Development role
- Experience with top ad agencies and direct brand marketers
- A clear understanding of interactive advertising industry
- Ability to multi-task within a fast-paced environment, strong communication, follow through, problem solving and interpersonal skills
- Possess strong organizational, verbal and analytic skills
- Ability to build and manage a team in a high-growth, rapidly evolving environment

#### More About hi5:

Launched in late 2003, hi5 is one of the largest social networks in the world. We're a founding adopter of OpenSocial, a community-driven specification for building social applications across the Web, and we're also a founding member of the OpenSocial Foundation, a new non-profit being formed to ensure the longevity and neutrality of OpenSocial. Each day, millions of people use hi5 to stay connected and share information with friends and family around the world, meet new people, express their identity, and discover linkages.

hi5 offers an upbeat work atmosphere and the opportunity to influence the way people connect to the world. You will be working with an exceptional team and receive a competitive salary with benefits. A privately-held company, hi5 reached profitability within its first year, and raised \$20 million from MDV- Mohr Davidow Ventures in July 2007. For more information, you can visit [www.hi5.com](http://www.hi5.com) or [www.hi5networks.com](http://www.hi5networks.com).

If interested please contact:

Kevin Kanarek  
hi5 Networks Inc.  
55 2nd St. Suite 300  
San Francisco, CA 94105  
415.962.7083  
Kkanarek {at } hi5.com

- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 783020558

**Exhibit 11**  
**Page 43**

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## **EXHIBIT 12**

hi5 - Who's in? - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Search Favorites

Address http://web.archive.org/web/20071012175437/http://www.hi5.com/friend/video5searchResults.do?searchText=coldplay

Log in Help Join

Search:  GO

People Videos

Home My Profile Friends Messages Video Music Schools Colleges Groups Search

Main Top Videos Top Channels Upload Music Comedy Movies User Videos All Channels

### Search results for coldplay

**Filter Search**




**By country**

- All Countries
- United States of America
- United Kingdom
- Portugal

**Video Search:**  **Go**

**SORT BY:** Most Recent | Highest Rated | Most Viewed | Most Discussed

1-10 of 624 1 2 3 4 5 Next >

 <p><b>Coldplay</b> Coldplay-Clocks Added Jan 3, 2007 6,058 views ★</p>	<p>Category: User Videos Country: UNITED STATES OF AMERICA Tags: coldplay</p>
 <p><b>Coldplay - The Scientist</b> Coldplay - The Scientist Added Nov 21, 2006 9,486 views ★</p>	<p>Category: Music Country: SPAIN Tags: scientist, coldplay</p>
 <p><b>Coldplay - Yellow</b> Coldplay - Yellow Added Nov 27, 2006 5,721 views ★</p>	<p>Category: Music Country: UNITED STATES OF AMERICA Tags: yellow, coldplay</p>

Start Document3 - Microsoft ... hi5 - Who's in? - Micro... Internet 6:53 PM

hi5 - Who's in? - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://web.archive.org/web/20070419151319/www.hi5.com/friend/video/displayVideoSearchResults.do?searchText=chingy

**Search results for 'chingy'**

Video Search:  Go

1 2 3 4 5 Next > |

**Filter Search**

**By Country**

- All Countries
- United States of America
- United Kingdom
- Portugal

**Sort BY:** Most Recent | Highest Rated | Most Viewed | Most Discussed

Thumbnail	Title	Date Added	Views	Category	Country	Tags
	chingy chingy	Added Jan. 25, 2007	382 views	Music	Romania	chingy, right thurr
	chingy chingy	Added Feb. 20, 2007	216 views	Other		chingy
	chingy chingy	Added Feb. 26, 2007	280 views	Music	United States of America	chingy
	chingy - chingy - balla baby	Added Dec. 6, 2006	1043 views	Music	United States of America	

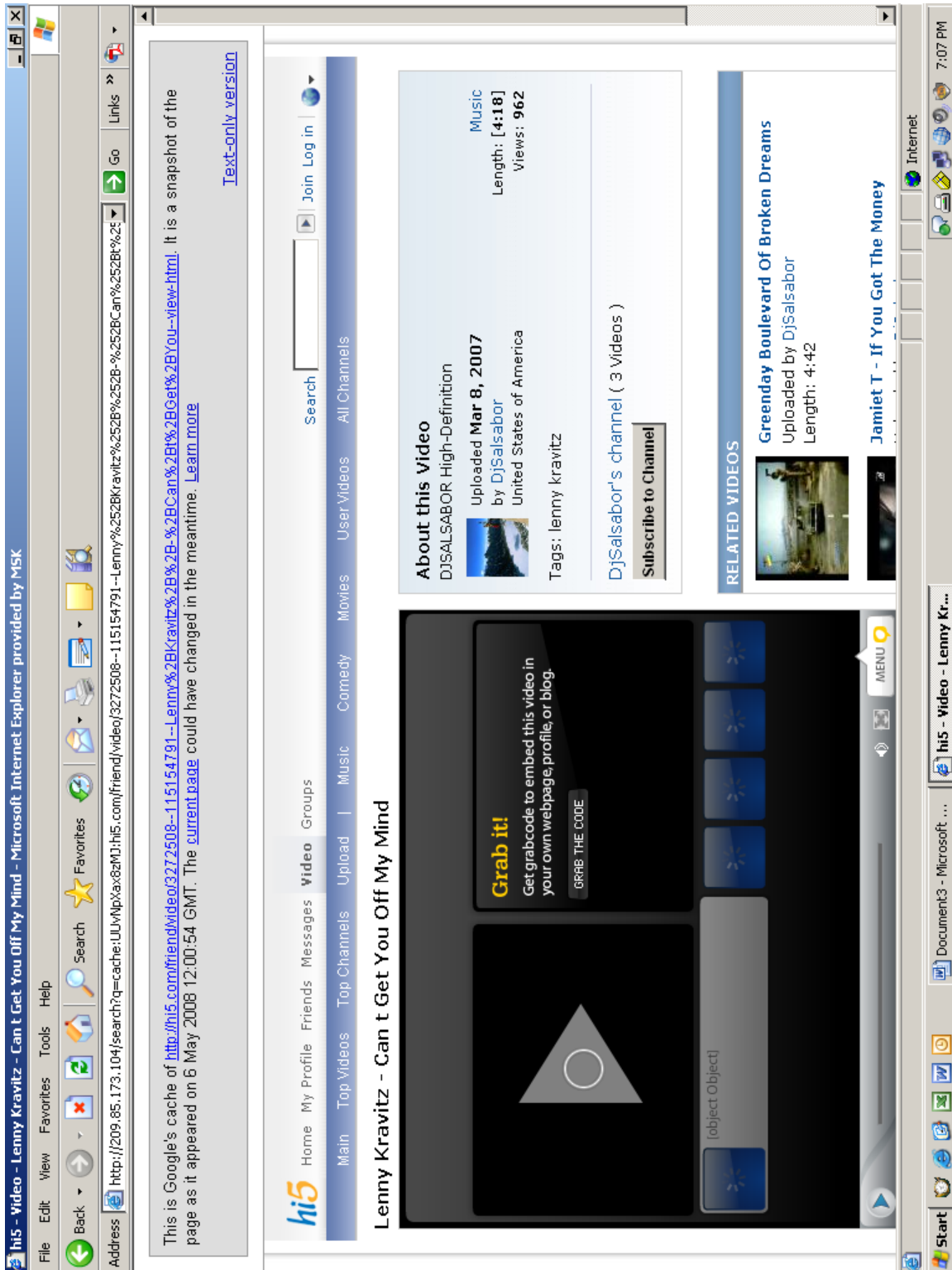
**Advertisements:**

- Use Compact Fluorescent Bulbs and Save Energy**  
fight global warming.com
- ENVIRONMENTAL DEFENSE**  
finding the ways that work  
Ad Council

Error on page.

Start Document3 - Microsoft ... hi5 - Who's in? - Micro... Internet 6:56 PM







**EXHIBIT 13**

hi5 - Groups - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword  Category  Country  Language

**SEARCH RESULTS**

1-20 of 157 1 2 3 4 5 Next > >|

 <p><b>The BEATLES</b> 1981 Members · 1178 Messages · 23 Photos For the people who's music never ends</p>	<p>Created Dec 28, 2004 Last Updated Aug 14, 2008 10:04 AM</p>
 <p><b>THE BEATLES FAN GROUP</b> 52 Members · 2 Messages · 0 Photos For all the people who thinks the beatles are the greatest musicians EVER!!!!</p>	<p>Created Jan 23, 2005 Last Updated Jul 31, 2008 5:26 PM</p>
 <p><b>i love tha Beatles...</b> 34 Members · 11 Messages · 0 Photos well i love the beatles....but do u like ta beatles???</p>	<p>Created Apr 23, 2005 Last Updated Jul 28, 2008 9:24 AM</p>
 <p><b>Beatles' ROCK</b> 201 Members · 51 Messages · 2 Photos Beatles are the greatest ever... the greatest music band ever... if u think so join this group!!</p>	<p>Created Aug 8, 2005 Last Updated Jul 21, 2008 9:30 AM</p>

0 BUSINES ONLINE SECURELY

SECURITY

Done Start

hi5 - Groups - Microsoft Internet Explorer provided by MSK

Document3 - Microsoft ...

10:41 AM

hi5 - Groups - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**

Name/Keyword: coldplay Category: Any Category Country: United States of America Language: Any Language

**SEARCH RESULTS**

1-20 of 147 1 2 3 4 5 Next > >|

	<p><b>*COLDPLAY*</b></p> <p>543 Members · 108 Messages · 0 Photos</p> <p>IS THE BEST!!</p>	<p>Created Jan 29, 2005</p> <p>Last Updated Aug 14, 2008 3:01 AM</p>
	<p><b>*COLDPLAY*</b></p> <p>71 Members · 5 Messages · 0 Photos</p> <p>IS THE BEST!!!</p>	<p>Created Jan 29, 2005</p> <p>Last Updated Aug 5, 2008 9:08 AM</p>
	<p><b>....COLDPLAY:....</b></p> <p>92 Members · 17 Messages · 4 Photos</p> <p>FAns de COLDPLAY!! Right HERE!!</p>	<p>Created Apr 4, 2005</p> <p>Last Updated Aug 12, 2008 2:25 PM</p>
	<p><b>coldplay rocks</b></p> <p>272 Members · 71 Messages · 1 Photos</p> <p>coldplay rules!!!!</p>	<p>Created Oct 6, 2004</p> <p>Last Updated Aug 11, 2008 5:36 AM</p>

**SELL YOUR PRODUCTS ONLINE.**

**E-COMMERCE**

Done Start

Internet

Document3 - Microsoft ...

hi5 - Groups - Microsoft ...

10:42 AM

hi5 - Groups - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

[ Join | Log in ] Help





Home My Profile Friends Messages Groups Search

**hi5**




Name/Keyword radiohead Category Any Category Country United States of America Language Any Language

**SEARCH RESULTS**

1-20 of 98 1 2 3 4 5 Next > <

 <p><b>Radiohead!</b> 575 Members · 488 Messages · 0 Photos metanse aki los q son fans de radiohead! radiohead rules!</p>	<p>Created Jan 21, 2005 Last Updated Aug 13, 2008 8:35 AM</p>
 <p><b>Radiohead</b> 202 Members · 53 Messages · 0 Photos The Best Depressive Group Over The World, Enter Only If You Feel Radiohead's Music In Your Blood</p>	<p>Created Jan 29, 2005 Last Updated Jul 24, 2008 2:37 PM</p>
 <p><b>Radiohead</b> 147 Members · 27 Messages · 0 Photos To all the admirer of Radiohead music.</p>	<p>Created Apr 11, 2005 Last Updated Aug 11, 2008 10:58 AM</p>
 <p><b>Radiohead</b> 134 Members · 21 Messages · 2 Photos The best band in the world!</p>	<p>Created Apr 11, 2005 Last Updated Jul 16, 2008 7:56 AM</p>

## Find Your Graduating Class

**I graduated in:** 1998 1988 1978

Start Internet

Document3 - Microsoft ...

hi5 - Groups - Microsoft Internet Explorer provided by MSK

10:44 AM

hi5 - Groups -- Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/group/displayGroupSearchResults.do

Go Links

Name/Keyword "lenny kravitz"





Category Any Category

Country United States of America


Language Any Language

SEARCH RESULTS

1-12 of 12

 <p><b>GenItTa K Le EnCaAaAnTa La BuEnA mUsiCa Y ObvIAmEn...</b> 14 Members · 1 Messages · 0 Photos</p> <p>GeNtItA K lE eNcAaNTA La mUsiCa y TeNgA BuEnAs CoLeCcioNeS De ArTistaS VaRIoS TaLeS cOMO U2, LeNnY KrAvItZ, CrEeD, PoIsOn, ACDC, eTc CuAlKieR arTista PeRo obvIAmeNte brAvAzO;) UnEtE a Este GrUpO.....C...</p>	<p>Created Jun 4, 2005 Last Updated Jul 3, 2008 10:36 PM</p>
 <p><b>GraVate TA Kravitz</b> 22 Members · 7 Messages · 1 Photos 100% Lenny Kravitz</p>	<p>Created May 5, 2004 Last Updated Jun 9, 2008 4:55 PM</p>
 <p><b>Lenny Kravitz</b> 597 Members · 49 Messages · 15 Photos</p> <p>Since his first album until his last production he really knows how to rock, his lyrics, his music, his style.... he is totally unique.</p>	<p>Created Jan 8, 2005 Last Updated Aug 13, 2008 3:52 PM</p>
 <p><b>Lenny Kravitz</b> 244 Members · 22 Messages · 9 Photos</p> <p>for everyone!! hm..and also for all the lenny, lenni all over the world... bienvenidos..y have a nice day..:). ps. also fans of Lenny Kravitz!!</p>	<p>Created Feb 1, 2005 Last Updated Aug 11, 2008 3:16 PM</p>

Not quite reaching what you want in life?



Done

Start

hi5 - Groups -- Micro...

Document3 - Microsoft ...

Internet

10:45 AM



hi5 | Your Friends. Your World. - Microsoft Internet Explorer provided by MSK

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address http://www.hi5.com/friend/processBrowseSearch.do?searchText=beyonce

[ Join | Log in ] Help


Home My Profile Friends Messages Groups Search

hi5 SEARCH RESULTS

People (344) Groups (335)

You searched for: beyonce Go


1-20 of 335 1 2 3 4 5 Next > >|



>>> BeYoNcE

Category: Music  
2097 Members  
493 Topics


Join Group  
View All Topics



For all the Beyonce Lovers

Category: Romance and Relationships  
68 Members  
17 Topics


Join Group  
View All Topics



beyonce's club

Category: Music  
735 Members  
108 Topics


Join Group  
View All Topics



Beyonce lovers

Category: Sports and Recreations  
132 Members  
14 Topics

Join Group  
View All Topics



**TRUMP UNIVERSITY**

**The TRUMP INSTITUTE**

THE DONALD TRUMP WAY TO WEALTH SEMINAR IS COMING TO Columbus August 23-25

**FREE ADMISSION!**

**REGISTER NOW!**

Come and learn Donald Trump's secrets and strategies for creating wealth.

Start Internet 6:56 PM

hi5 | Your Friends. Yo... Microsoft Word

**EXHIBIT 14**

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## crain's new york business.com

NEWCOMER: Small West Coast firm sees dollar signs in city **Amanda Fung**  
**Published: November 18, 2007 - 5:59 am**

For many ambitious online ad companies, at some point New York is the next logical step.

That point came recently for VideoEgg. The San Francisco outfit made a name for itself by developing a technology that delivers video ads to social networking sites like Facebook. With a \$34 million infusion of venture capital, it set its sights on getting more contracts from bigger clients. In September, the firm pitched a tent in Manhattan.

"It is vital for us to have a big presence in New York," says Michael Hess, VideoEgg's vice president of sales. "There is tons of money here."

VideoEgg's main product is overlay video ads, which run on the bottom of the computer screen. Consumers generally find them less irritating than the dominant preroll ads, which people are often forced to watch before they can view a video.

So far, VideoEgg has handled 300 brand campaigns on 90 networking sites for such companies as Burger King, Ford, General Motors, Microsoft, Nike and Universal Pictures. The ads reach an audience of 35 million Web users a month.

The company is building on those numbers in New York.

"We blitzed the ad agencies and advertisers with calls," says Mr. Hess, whose Katonah, N.Y., home served as the office here before the staff reached critical mass; VideoEgg then moved to the Flatiron district. "There is a large demand to learn about our solution."

### Small fish in growing pond

But VideoEgg, started in 2004 by three Yale graduates, hasn't picked an easy growth recipe. It faces competition from giants like Google's YouTube, which launched its version of overlay video ads this summer. Online video ad spending, projected to be \$600 million this year, is expected to reach \$7 billion in 2012, and the field is bound to get crowded, according to Forrester Research.

"Online video is so new, and VideoEgg is so small in the space," says Shar VanBoskirk, principal analyst at Forrester. "Its challenge is educating advertisers on why they should work with them."

VideoEgg has specialized distribution. Its technology allows ad placement within widgets--applications that networkers can use to share everything from movie picks to photos. Facebook alone has 5,000 widgets; VideoEgg recently began delivering video ads to 100 widgets.

VideoEgg has received money from sources that include WPP, August Capital, Maveron and Focus Ventures. It has opened offices in five other major markets: Chicago, Detroit, London, Los Angeles and Toronto. But most of its revenues, which the company says have been growing at 40% a month, are generated in New York.

Comments? [AFung@crain.com](mailto:AFung@crain.com)

**Exhibit 14**  
**Page 54**



---

Entire contents © 2008

---

**EXHIBIT 15**

Contact us by email:

Your Name:

Your Email:

Company:

Region:

--Please Select--

Subject:

Advertising on the VideoEgg Network

Comments:

Submit

Contact us by phone:

**New York**

(212) 792-9514

**Chicago**

(312) 607-2699

**Detroit**

(248) 330-6189

**Los Angeles**

(917) 399-7482

**San Francisco**

(415) 738-5122

**Canada**

(514) 770-5906

**UK & Australia**

(415) 738-5138

Are you a Publisher wanting to join our network?

Click [here](#) to apply now.

**General Inquiries**

180 Townsend St.

San Francisco, CA 94114

(415) 738-5100

[contact@videoegg.com](mailto:contact@videoegg.com)

**PR:**

Blanc & Otus

[videoegg@blancandotus.com](mailto:videoegg@blancandotus.com)

Click [here](#) to find out more about AdFrames.

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**EXHIBIT 16**



# Cost per impression

## From Wikipedia, the free encyclopedia

**Cost Per Impression** is a phrase often used in online advertising and marketing related to web traffic. It is used for measuring the worth and cost of a specific e-marketing campaign. This technique is applied with web banners, text links, e-mail spam, and opt-in e-mail advertising, although opt-in e-mail advertising is more commonly charged on a Cost Per Action (CPA) basis.

The *Cost Per Impression* is often abbreviated to **CPI**

This type of advertising arrangement closely resembles Television and Print Advertising Methods for speculating the cost of an Advertisement. Often, industry agreed approximates are used. With Television the Nielsen Ratings are used and Print is based on the circulation a publication has.

For Online Advertising, the numbers of views can be a lot more precise. When a user requests a Web Page, the originating server creates a log entry. Also, a third party tracker can be placed in the web page to verify how many accesses that page had.

There are other advertising pricing structures. CPC - Cost Per Click Through, CPL - Cost Per Lead (lead usually meaning a free registration), CPS - Cost Per Sale. These structures are collectively referred to as CPA - Cost per Action.

CPI and/or Flat rate advertising deals are sometimes preferred by the Publisher/Webmaster because they will receive a more consistent fee proportional to the amount of traffic.

Today, it is very common for large publishers to charge for most of their advertising inventory on a *CPM* or Cost Per Time (CPT) basis.

A related term, eCPM or effective Cost Per Mille, is used to measure the effectiveness of advertising inventory sold (by the publisher) via a CPC, CPA, or CPT basis.

## Cost Per Thousand

CPM is frequently used in advertising to represent cost per thousand (where M is the roman numeral of 1000). When used in advertising it relates to the cost per thousand page impressions.

It is important to remember that when someone says something like, "our CPM is \$5," this means that the *Cost Per Impression* is \$0.005

## See also

- Internet marketing
- CTR - Click-through rate
- CPM - Cost Per Mille
- eCPM - Effective Cost Per Mille
- CPT - Cost per thousand
- CPI - Cost Per Impression
- PPC - Pay per click
- CPA - Cost Per Action
- CPC - Cost Per Click
- eCPA - effective Cost Per Action

- CPT
- Cpm#Marketing
- Compensation methods
- Google Adsense
- Performance-based advertising

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Categories: Internet terminology | Compensation

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# Pay per click

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## From Wikipedia, the free encyclopedia

**Pay per click (PPC)** is an Internet advertising model used on search engines, advertising networks, and content websites, such as blogs, where advertisers only pay when a user actually clicks on an advertisement to visit the advertisers' website. With search engines, advertisers typically bid on keyword phrases relevant to their target market. When a user types a keyword query matching an advertiser's keyword list, or views a webpage with relevant content, the advertisements may be displayed. Such advertisements are called a *sponsored links* or *sponsored ads*, and appear adjacent to or above the "natural" or organic results on search engine results pages, or anywhere a webmaster or blogger chooses on a content page. Content websites commonly charge a fixed price for a click rather than use a bidding mechanism.

Although many PPC providers exist, Google AdWords, Yahoo! Search Marketing, and Microsoft adCenter are the largest network operators as of 2007. Minimum prices per click, often referred to as *costs per click* (CPC), vary depending on the search engine and the level of competition for a particular phrase or keyword list—with some CPCs as low as US\$0.01. Very popular search terms can cost much more on popular search engines. The PPC advertising model is open to abuse through click fraud, although Google and other search engines have implemented automated systems to guard against abusive clicks by competitors or corrupt webmasters.<sup>[1]</sup>

### Internet Marketing

Display advertising  
E-mail marketing  
E-mail marketing software  
Interactive advertising  
Social media optimization  
Web analytics

### Affiliate marketing

Cost per action  
Contextual advertising  
Revenue sharing

### Search engine marketing

Search engine optimization  
**Pay per click advertising**  
Paid inclusion

Mobile advertising

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## Categories

Pay per click campaigns can be categorized into two major categories: sponsored match (or keyword) and content match. *Sponsored match* campaigns involve the display of advertisements on search engine results pages, whereas *content match* campaigns involve the display of advertisements on publisher websites, newsletters, and e-mails.<sup>[2]</sup>

There are other types of pay per click programs that target product or service searches and product comparison sites. Search engine companies may participate in more than one category. PPC programs do not generate any

revenue solely from Web traffic for websites that display the advertisements: Revenue is generated only when a user clicks on the advertisement itself.

## Keyword-based PPC

Keyword-based pay per click advertisers bid on *search terms*—keywords consisting of words or phrases, and possibly product model numbers. When a user searches for a particular keyword, the list of advertiser links appears, where the ordering of those links is based on the amount bid for the given keyword. Keywords are the very heart of PPC advertising, and are guarded as highly-valued trade secrets by the advertisers. Many advertising firms offer software or services to help advertisers develop keyword strategies. Content Match, a service offered by Yahoo!, distributes the keyword ad to the search engine's partner sites and/or publishers that have distribution agreements with the search engine company.

As of 2007, the following are notable PPC keyword search engines:

- Ask.com
- Baidu
- Google AdWords
- LookSmart
- Microsoft adCenter
- MIVA
- Superpages.com
- Yahoo! Search Marketing
- Yandex

## Product engines

Product engines (a.k.a. *product comparison engines* or *price comparison engines*) are search engines for products, and let advertisers provide "feeds" of their product databases. When a user searches for a product, links to advertisers are displayed for that particular product. More prominence is given to advertisers who pay more; however, the user can typically sort by price.

Some product engines such as Shopping.com use a pay per click model and have a defined rate card.<sup>[3]</sup> Other engines such as Google Product Search, part of Google Base (previously known as Froogle), do not charge for the listing, but still require an active product feed to function.<sup>[4]</sup>

The following are notable PPC product engines:

- NexTag
- PriceGrabber
- Shopping.com
- Shopzilla

## Service engines

Service engines allow advertisers to provide feeds of their service databases. When a user searches for a service, links to advertisers are displayed for that particular service. More prominence is given to advertisers who pay more; however, the user can typically sort by price or other criteria. Some pay per click product engines have expanded into the service space, while other service engines operate in specific vertical markets.

The following are notable PPC service engines:

- NexTag
- SideStep

## Pay per call

Pay-per-call is a business model for advertisement listings in search engines and directories that allows publishers to charge local advertisers on a per-telephone-call basis for each sales lead (i.e., call) the publishers generate. The term "pay per call" is sometimes confused with click-to-call, which along with call tracking, is a technology that enables the pay-per-call business model. Pay per call is not restricted only to local advertisers: Many of the pay per call search engines allow advertisers with a national presence to create advertisements with local telephone numbers. According to the Kelsey Group, the pay per call market is expected to reach US\$3.7 billion by 2010.<sup>[5]</sup>

## Pay per delivery

Pay per delivery is a variation on pay per click used in e-mail marketing. E-mail marketing campaigns are charged only on the basis of e-mails that are delivered successfully.

## Pay per action

Pay per action (PPA) is a variation on pay per click adopted by many search engines. An advertiser pays a specified amount upon successful completion of some action (e.g., conversion, sales lead, or sale). PPA was a beta test for advertising distribution within the Google Content Network. However, Google announced in July 2008 that the program will be discontinued in August 2008.

## History

In February 1998 Jeffrey Brewer of Goto.com, a 25-employee startup company (later Overture, now part of Yahoo!), presented a pay per click search engine proof-of-concept to the TED8 conference in California.<sup>[6]</sup> This presentation and the events that followed created the PPC advertising system. Credit for the concept of the PPC model is generally given to Idealab and Goto.com founder, Bill Gross.

Google started search engine advertising in December 1999. It was not until October 2000 before the AdWords system was introduced, allowing advertisers to create text ads for placement on the Google search engine. However, PPC was only introduced in 2002; until then, advertisements were charged at cost-per-thousand impressions. Yahoo! advertisements have always been PPC-based since their introduction in 1998.

For a more in-depth presentation of PPC's history, see Fain and Pedersen (2006).<sup>[7]</sup>

## Use in "paid to surf" websites

Pay per click search engines enlist members, known as *affiliates*, to display webpages called *portals*, which display various keywords. PPC affiliates will advertise their portals to paid to read (PTR) websites, in the hopes that the PTR affiliates will click a keyword, and then click one of the results. The PPC affiliates receive a small commission for each search.

Owners of paid to surf websites may advertise their own search portals, sending more advertisements—and essentially more money—to their affiliates who click more keywords and search results. However, this process is frowned upon, as many consider these webmasters to be forcing their affiliates into committing click fraud, as the majority of the paid to surf website's revenue may come from the webmasters' PPC commissions.

## See also

**Exhibit 16**  
**Page 61**

## Notable PPC-based search engines

- Ask.com
- Business.com
- Google (Google AdWords)
- Looksmart
- MSN/Live Search (Microsoft adCenter)
- Yahoo! (Yahoo! Search Marketing)

## Related concepts

- Ad serving
- Click-through rate
- Compensation methods
- Cost per action
- Cost per click
- Cost per impression
- Cost per mille
- Cost per thousand
- Effective cost per action
- Effective cost per mille
- Pay for placement
- Performance-based advertising

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Categories: Internet advertising and promotion | Compensation | Pricing | Internet advertising by method | Internet marketing

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, a Delaware Corporation; CAROLINE RECORDS, INC., a New York Corporation; VIRGIN RECORDS AMERICA, INC., a California Corporation; EMI BLACKWOOD MUSIC, INC., a Connecticut Corporation; EMI APRIL MUSIC, INC., a Connecticut Corporation; EMI FULL KEEL MUSIC, INC., a duly licensed Corporation; EMI VIRGIN MUSIC, INC., a New York Corporation; EMI ROBBINS CATALOG, INC., a New York Corporation; EMI WATERFORD MUSIC, INC., a California Corporation; EMI GROVE PARK MUSIC, INC., a California Corporation; COLGEMS-EMI MUSIC, INC., a Delaware Corporation; and EMI VIRGIN SONGS, INC., a New York Corporation

Plaintiffs,

v.

VIDEOEGG, INC. d/b/a VIDEOEGG.COM, a Delaware corporation; HI5 NETWORKS, INC. d/b/a HI5.COM; and DOES 1-10, inclusive

Defendants.

CASE NO. 08 CV 5831

**CERTIFICATE OF SERVICE**

I, Jeffrey M. Movit, hereby certify that on August 20, 2008 a true and correct copy of the August 18, 2008 Declaration of Marc E. Mayer was filed via CM/ECF, which will provide electronic copies and notification of filing to counsel of record for defendants VideoEgg, Inc. and Hi5 Networks, Inc.



DATED: New York, New York  
August 20, 2008

MITCHELL SILBERBERG & KNUPP LLP

By:  \_\_\_\_\_

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